IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7027 OF 2003

Shri Shrikant Chintaman Joshi)
Age 59 years, Occupation)
Retired, R/at "Sumeet" Swanand)
Society, 1st Road, Sahakarnagar)
No.2, Parvati, Pune 411 009.)... Petitioner.

Versus

Pune Municipal Corporation,)
a body corporate established)
under the provisions of the)
Bombay Provincial Municipal)
Corporation Act, 1949, through)
its Municipal Commissioner for)
the City of Pune, having his)
office at Pune Municipal)
Corporation Building, Shivaji)
Nagar, Pune - 411 005. ...)... Respondent.

ALONG WITH

CIVIL APPLICATION NO. 719 OF 2004

The Pune Municipal Corporation)

Shivajinagar,Pune 411 005.).. Applicant.

Versus

Shri Shrikant Chintaman Joshi)
Age 58 years, Occ.:Agriculturist)
R/at - Post Kharadi,Pune 411 014).. Respondent.

AND

CIVIL APPLICATION NO. 883 OF 2006

The Pune Municipal Corporation)
Shivajinagar,Pune 411 005.).. Applicant.

Versus

Shri Shrikant Chintaman Joshi)
Age 58 years, Occ.:Agriculturist)
R/at - Post Kharadi,Pune 411 014).. Respondent.

Mr. R.M.Pethe for Petitioner in Writ Petition
and for Respondent in both Civil Applications.

Mr. V. G. Mujumdar for Respondent in Writ Petition
and for Applicant in both Civil Applications.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 5TH APRIL, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

This petition is filed by an retired employee challenging refixation of his pension at lower scale than what he claims to be entitled. He also seeks to recover retiremental benefits and arrears of pension at the rate claimed by him.

2. The Petitioner was appointed as an Overseer on 8th July, 1966 on the establishment of Pune Municipal Corporation / Respondent. He was placed in the scale of 220-10-240-15-300-20-440 which was revised in 1976 as Rs.460-20-600-25-825-30-975. The date of regular increment was 1st July and he was promoted as Sub-Engineer on 21st March, 1985. He gave option to retain his old pay scale until commencement of the date of original increment.

3. The Petitioner's case is that he was properly placed in the pay scale of Rs.900/- as the post of Sub-Engineer carried pay scale of 500-25-600-30-1050 at the relevant time. His pay was properly fixed from time to time and lastly it was in the basic scale of Rs.14050 when he retired on 30th September, 2002 as an

Assistant Engineer. The Chief Auditor of the Respondent raised certain objections while fixing pensionable pay and it was pointed out that there was error committed while fixing pay of the Petitioner at two different stages during the service carrier and his last pay should have been in the scale of Rs.13,750/- instead of Rs.14,050/- in fact, if proper fixation is made. The Auditor, therefore, raised queries and sought clarification about improper fixation of pay. The Respondent refused to give retiremental benefits, therefore, to the Petitioner on the basis of the last pay drawn and called upon him to explain as to why the excess payment be not recovered.

4. The Petitioner took up the matter to Pension Adalat but it was in vain. He made representation to the Respondent which did not find favour and as such he has filed instant petition.

5. It is the case of the Respondent that notional increment was wrongly added in the pay scale of the Petitioner at the time of first promotion and subsequently his pay was wrongly revised at the time of granting him next higher stage when he became Assistant Engineer. The Respondent has contended that the Petitioner cannot be allowed to take advantage of

erroneous pay fixation and that he can claim retiral benefits only on the basis of correct pay which he was entitled to draw at the time of retirement. The Respondent has filed Civil Application No. 719 of 2004 and Civil Application No. 883 of 2006 claiming recovery of excess amount paid to the Petitioner as a result of wrong pay fixation.

6. We have heard learned Counsel for the parties. The crucial question is as to whether there was factual error committed while fixing pay of the Petitioner and as such his pension is properly fixed in the scale of Rs.13,150/- or that it should have been on the basis of the pay at Rs.14,050/-.

7.There is no dispute about the fact that pay of the Petitioner was fixed in the scale of Rs.460-20-600-25-825-30-975 as on 1st January, 1981 and the scale itself was revised to Rs.600-30-750-40-1150. It appears that while fixing his pay on 1st July, 1981 an error was committed. His pay as on 1st January, 1981 was in the scale of Rs.750/- which was wrongly fixed at Rs.790/- on 1st July, 1981. This mistake appears to have been committed due to addition of one increment wrongly. As a matter of fact, he had not completed required

period for earning of such increment. On perusal of the statement of earlier increments granted to him (P-52) it is explicit that as on 1st July, 1981 the basic pay of the Petitioner was Rs.750/- in the scale of Rs.600-30-750-40-1150. There is no substantial reason as to why within three months on 1st July, 1981 his pay was fixed at Rs.790/-. The addition of such increment is said to have been made to fix his case in the pay scale in as much as his date of increment was 1st July, 1981. The Petitioner has not produced record to show that he had exercised option to retain his old pay scale until the date on which his next increment was due. The stage of Rs.750/- was available in the pay scale of Rs.600-30-750-40-1150 and as such notional increment of Rs.40/- could not have been added so as to raise his pay at Rs.790/-. It appears that mistake was committed by the Respondent while allowing such addition of increment though there was no change in the post though it was only a revision of pay made in 1981. While effecting revision of pay for the post the Government / authority may allow addition of an increment only if there is no stage in the pay scale for fixation of pay. In the present case, as stated earlier, there was a stage of Rs.750/- in the scale itself and hence the additional increment could not have been granted.

Needless to say, the Petitioner was not entitled to receive basic pay at the rate of Rs.790/- as on 1st July, 1981 and was entitled to receive at Rs.750/-. This mistake was carried forward while granting him further increment.

8. The Petitioner was promoted as Assistant Engineer on 11th March, 1992. His basic pay drawn was at the rate of Rs.3,700/-, at the relevant time, which should have been Rs.3,200/- and by addition of one increment due to promotion it could be fixed at the rate of Rs.3,300/-. Still however, since the Petitioner exercised his option for deffering the date of increment as required under Regulation 23 of the Municipal Service Regulation, his basic pay would be Rs.3,500/- p.m. but the same was wrongly fixed at Rs.3,800/- on assumption that his previous basic pay was Rs.3,700/-. The subsequent fixation of pay was improper and incorrect since the previous error was carried forward while adding the increment.

9. It appears from the letter of Deputy Auditor (Additional) dated 27th November, 2002, that objections were raised when the pension papers were scrutinised and hence the Land Acquisition Department, where the Petitioner was working at the time of

retirement, was called upon to explain the anomaly. The explanation submitted by the Land Acquisition Office on 31st July, 2003 (Exhibit "M") does not show as to how as on 1st July, 1981 the basic pay of the Petitioner was fixed at Rs.790/-. We are of the opinion that factual error was committed by the Respondent while fixing his basic pay at the stage of revised pay as well as subsequent stage of the pay fixation at the time of his promotion. The Respondent has given him benefit of Regulation No.22 while fixing his pay in the promotional cadre in 1992/93. The Respondent has rectified the mistake after the audit objection was taken into account. We do not find any substantial error committed by the Respondent in this behalf. Needless to say, the Petitioner is not entitled to fixation of pension as per the actual last pay drawn but is entitled to the pensionary benefits as per the correct pay after rectification of the error, namely, instead of treating his basic pay as Rs.14,050/- it should have been treated as Rs.13,750/-.

10. Now, yet another question is as to whether the Respondent is entitled to recover the excess amount paid to the Petitioner. The Respondent has filed Civil Application Nos. 719 of 2004 and 883 of 2006

seeking recovery of the excess payment. In the case of **Shyam Babu Verma & Others v/s Union of India and Others**, (1994) 2 SCC 521, the Apex Court has observed:

> "Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

11. The Apex Court in the case of **P. H. Reddy & Ors. v/s N. T. R. D. & Ors.,** (2002) 2 SLR 694, has held that no recovery of excess payment should be

directed if the payment is made erroneously without any fault on the part of the employee. In the light of the legal position settled by both the judgments, we are of the view that the Respondent cannot seek recovery of excess payment made to the Petitioner and the Civil Application Nos. 719 of 2004 and 883 of 2006 deserve to the dismissed.

12. In the result, the Petition is dismissed with a direction that pensionary benefits in accordance with the last pay fixed after rectification of the error shall be paid to the Petitioner within reasonable time frame and, in any case, within six months. Rule discharged. No order as to costs.

Civil Application Nos. 719 of 2004 and 883 of 2006 are also dismissed.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)